

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

A.O. No. 455 of 2001
(Old No. 387 of 1997)
U.P. State Bood Transport Corp.
Vs.
Smt. Raj Bala & others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 30.09.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 455 of 2001
(Old No. 387 of 1997)

U.P. State Road Transport Corp.. Appellant

Versus

Smt. Raj Bala & others Respondents

Dated: 30.9.2004

Hon. Rajesh Tandon, J.

Present appeal has been filed against the judgment and award dated 27.2.1997 passed by the Motor Accident Claims Tribunal, Nainital.

Briefly stated the respondents have filed a claim petition under Section 110 of the Motor Vehicle Act, for grant of compensation on account of death of Sri Dulichand Sisodiya in a motor vehicle accident. The petitioners have alleged that on 4.9.1993 the deceased boarded bus No. UGP 4216 at Haldwani for going to Almora. The bus was being driven rashly and negligently by its driver due to which it met with accident at Birbhatti and fell down into a gorge. Sri Dulichand had sustained fatal injuries in the accident and he succumbed to the injuries instantaneously. The petitioners have claimed a sum of Rs.15,00,000/- as compensation.

The petition has been contested by the opposite party who filed written statement and denied the allegations of rash and negligent driving by the driver.

On the pleadings of the parties the following issues were framed:

1. Whether the accident took place due to rash and negligent driving by the driver of the bus?
2. Whether the petitioners are entitled to the compensation claimed?
3. Whether the dependents of the deceased had received a sum of Rs.55,000/- as compensation. If so, its effect?

The Claims Tribunal has held that the accident had taken place due to rash and negligent driving by the driver of the bus. On the basis of evidence on record, the learned Claims Tribunal has granted a compensation of Rs.201600/- to the petitioners. Feeling aggrieved the present appeal has been filed by the opposite party appellant.

I have heard the learned counsel for the parties and have perused the record.

To prove its case the petitioners have examined P.W.1 Smt. Rajbala wife of the deceased, P.W.2 Sri Jagdish Prasad Yadav and P.W.3 Sri Jasbir Singh. Beside the oral evidence the petitioners have filed copy of the F.I.R., post mortem examination report of deceased Dulichand, copy of case diary of police, copy of Pariwar register, copy of death certificate, copy of the application given to the District Magistrate, Nainital and copy of the High School certification of the deceased.

P.W.3 Jasbir Singh has stated on oath that the accident had taken place due to rash and negligent driving by the driver

of the bus. The Opposite party has denied the allegation that the accident had taken place due to rash and negligent driving by the bus driver. The opposite party has filed copy of the statement of the bus driver in defence. Sri Nirman Singh driver has stated that the accident had taken place due to tire burst. The bus driver is the best witness to depose regarding the actual cause of accident but he has not been examined on oath by the opposite party for the reason best known to the appellant.

In the case of accident the burden to prove the cause and manner of accident lies on the driver and owner of the vehicle involved in the accident. In the present case although the driver of the vehicle is still alive but he did not care to appear in the witness box and to state on oath the actual cause and manner of the accident.

The Apex Court in the case Syad Akbar Vs. State of Karnataka, AIR 1979 SC 1848 has held as under:

“It is to such cases that the maxim res ipsa loquitur may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. To emphasise the point, it may be reiterated that in such case, the event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. But, according to some decisions, satisfaction of this condition alone is not sufficient for res ipsa to come into play and it has to be further satisfied that the event which caused the accident was within the defendant's control. The reason for the second requirement is that where the defendant has control of the thing, which caused the injury, he is in a better position than

*the plaintiff to explain how the accident occurred.**

* * * * *

Thus for the application of the maxim res ipsa loquitur no less important a requirement is that the res must not only bespeak negligence, but pin it on the defendant.”

Thus the Claims Tribunal has rightly held that the accident was caused due to rash and negligent driving by the bus driver.

So far as the amount of compensation is concerned the Claims Tribunal has fixed the monthly income of the deceased as Rs.1690/- on the basis of the statement of P.W.2 Jagdish Prasad Yadav who is Sales Executive in Devi Lal Aluminium Industry. The Claims Tribunal after deducting 1/3 amount for the own expenses of the deceased has fixed the annual dependency of the petitioners on the income of deceased as Rs.16800/-. Admittedly the age of the deceased at the time of accident was 29 years. The learned Claims tribunal has applied multiplier of 12 for calculating the amount of compensation and thus fixed a sum of Rs.2,01,600/- as compensation.

During arguments the learned counsel for the claimant respondents has vehemently argued that the multiplier of 12 applied by the Claims Tribunal was not proper considering the age of the deceased but no counter claim has been field by the respondents and in the absence of counter claim the amount of compensation cannot be enhanced in the appeal.

However, the appeal has no force and is, hereby dismissed with costs.

(Rajesh Tandon, J.)

30.9.2004

*Dhyani